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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 140220160-4692-02]

RIN 0648-BD99

Fisheries of the Northeastern United States; Northeast Skate Fishery; Framework Adjustment 2

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS approves and implements measures in Framework Adjustment 2 to the Northeast Skate Complex Fishery Management Plan, which was developed by the New England Fishery Management Council. The approved management measures include updated skate fishery specifications for the 2014-2015 fishing years and changes to skate reporting requirements. The action is necessary to update the Fishery Management Plan to be consistent with the best available scientific information, and improve management of the skate fisheries. The rule is expected to help conserve skate stocks, while maintaining economic opportunities for the skate fisheries.

DATES: This rule is effective [insert date 30 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: Copies of the framework, including the Environmental Assessment and Regulatory Impact Review (EA/RIR) and other supporting documents for the action are available from Thomas A. Nies, Executive Director, New England Fishery Management Council, 50

Water Street, Mill 2, Newburyport, MA 01950. The framework is also accessible via the Internet at: <http://www.nero.noaa.gov>.

NMFS prepared a Final Regulatory Flexibility Analysis (FRFA), which is contained in the Classification section of this rule. Copies of the FRFA and the Small Entity Compliance Guide are available from the Regional Administrator, Greater Atlantic Regional Fisheries Office, NMFS, 55 Great Republic Drive, Gloucester, MA 01930, and are available via the Internet at: <http://www.nero.noaa.gov>.

FOR FURTHER INFORMATION CONTACT: Tobey Curtis, Fishery Policy Analyst, (978) 281-9273.

#### SUPPLEMENTARY INFORMATION:

##### Background

The New England Fishery Management Council is responsible for developing management measures for skate fisheries in the northeastern U.S. through the Northeast Skate Complex Fishery Management Plan (Skate FMP). Seven skate species are managed under the Skate FMP: Winter; little; thorny; barndoor; smooth; clearnose; and rosette. The Council's Scientific and Statistical Committee reviews the best available information on the status of skate populations and makes recommendations on acceptable biological catch (ABC) for the skate complex (all seven species). This recommendation is then used as the basis for catch limits and other management measures for the skate fisheries.

This final rule approves and implements measures contained in Framework Adjustment 2 to the Skate FMP. The Council developed Framework 2 to update the skate fishery specifications (i.e., annual catch limit (ACL), annual catch target (ACT), total allowable landings (TAL), and possession limits) for fishing years 2014 and 2015. Framework 2 also includes

adjustments to reporting requirements for skate vessels and dealers. A proposed rule to implement the measures contained in Framework 2 published in the Federal Register on May 21, 2014 (79 FR 29154), with public comments accepted through June 20, 2014. Details concerning the development of Framework 2 and the proposed measures were contained in the preamble of the proposed rule and are not repeated here.

## Final Measures

### 2014-2015 Specifications

Based upon the recommendations of the Council, the Skate ABC and associated catch limits are being reduced approximately 30 percent from 2013 levels. The catch reduction is largely based on declines in trawl survey biomass for the more abundant little and winter skate species (refer to the EA for more details; see ADDRESSES). NMFS is implementing the following specifications for the skate fishery for the 2014-2015 fishing years:

1. Skate ABC and ACL of 78.218 million lb (35,479 mt);
2. ACT of 58.663 million lb (26,609 mt);
3. TAL of 36.123 million lb (16,385 mt) (the skate wing fishery is allocated 66.5 percent of the TAL (24.022 million lb (10,896 mt)) and the skate bait fishery is allocated 33.5 percent of the TAL (12.101 million lb (5,489 mt)), divided into three seasons according to the regulations at § 648.322);
4. Status quo skate bait possession limit, as defined in § 648.322(c): 25,000 lb (11,340 kg) whole weight per trip for vessels carrying a valid Skate Bait Letter of Authorization; and
5. Status quo skate wing possession limits, as defined in § 648.322(b): 2,600 lb (1,179 kg) wing weight per trip for Season I (May 1 through August 31), and 4,100 lb (1,860 kg) wing weight per trip for Season II (September 1 through April 30) for vessels fishing on a

Northeast Multispecies, Monkfish, or Scallop Day-at-Sea. The Northeast Multispecies Category-B Day-at-Sea possession limit remains at 220 lb (100 kg) wing weight per trip, and the non-Day-at-Sea incidental possession limit remains at 500 lb (227 kg) wing weight per trip.

NMFS is not implementing any changes to the existing in-season incidental possession limit trigger points (85 percent in the wing fishery, 90 percent in the bait fishery). While these reductions in catch limits are expected to address the current overfishing status for winter skates (not overfished), the Council intends to develop a new skate action during 2014 to address overfishing and rebuild overfished thorny skates.

#### Vessel and Dealer Reporting Requirements

A long-term goal of the Skate FMP has been to improve species-specific skate catch information. Through this final rule, fishing vessels and dealers will no longer be permitted to report “unclassified skate,” which hinders single-species assessment and management efforts. Skate bait vessels and dealers are now required to report landings by species from among the following options: Winter skate; little skate; little/winter skate (unknown mix of these two species); barndoor skate; smooth skate; thorny skate; clearnose skate; or rosette skate. Skate wing vessels and dealers are now required to report landings by species from among these options: Winter skate; barndoor skate; thorny skate; or clearnose skate. These reporting options have always been available to vessels and dealers, but they have been uncommonly used.

Based upon NMFS port sampling data, over 98 percent of skate wing fishery landings are composed of winter skate, so it is expected that most of the “unclassified” skate wing landings would translate into “winter skate” landings. Similarly, approximately 90 percent of skate bait landings are composed of little skate, with the remainder being largely comprised of juvenile

winter skates. Therefore, “unclassified” landings in the bait fishery are expected to translate into “little skate” or “little/winter skate” landings. While in most circumstances it is unlawful to retain, land, or possess barndoor, thorny, and smooth skates, vessels and fish dealers must still report the unauthorized landing of these species when they occur. Outreach, education, and continued monitoring of landings by NMFS will aid fishing vessels and dealers with this transition.

#### Comments and Responses

Only a single comment was received on the proposed rule. No changes were made to the final rule as a result of the comment.

Comment: A marine conservation organization commented that it was largely supportive of the proposed skate fishery specifications, but suggested that more should be done to rebuild the overfished thorny skate. Additionally, they suggested that reporting options for all seven skate species should be maintained in the skate wing fishery (rather than just for the four species that are considered of marketable size for the wing market).

Response: NMFS and the Council acknowledge the overfished condition of thorny skate, and the Council is expected to start developing a new action to address thorny skate rebuilding later this year. Thorny skate is already a prohibited species, and potential additional measures to address thorny skate rebuilding could not be analyzed in time to be considered within Framework 2. With respect to the reporting options, the Council recommended, and NMFS agrees, that little, smooth, and rosette skate reporting options are not necessary in the wing fishery at this time, because those species are not currently landed in the skate wing fishery due to their small size. If market conditions change, reporting options for those species can be added in the future.

## Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Fishery Conservation and Management Act, the NMFS Assistant Administrator has made a determination that this rule is consistent with the Skate FMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

This action has been determined to be not significant for the purpose of Executive Order (E.O.) 12866.

Pursuant to section 604 of the Regulatory Flexibility Act (RFA), NMFS has prepared a Final Regulatory Flexibility Analysis (FRFA) in support of this action. The FRFA incorporates the Initial Regulatory Flexibility Analysis (IRFA), a summary of the significant issues raised by the public comments in response to the IRFA, NMFS' response to those comments, relevant analyses contained in the action and its EA, and a summary of the analyses completed to support the action in this rule. A copy of the analyses and the EA are available from the Council (see ADDRESSES). A summary of the IRFA was published in the proposed rule for this action and is not repeated here. A description of why this action was considered, the objectives of, and the legal basis for this rule is contained in the preamble to the proposed rule and this final rule and is not repeated here.

A Summary of the Significant Issues Raised by the Public in Response to the IRFA, a Summary of the Agency's Assessment of Such Issues, and Statement of Any Changes Made in the Proposed Rule as a Result of Such Comments

Only one comment was received on the proposed rule. For a summary of the comment, and NMFS' response, see the Comments and Responses section above. The comment did not

raise any issues or concerns related to the IRFA or the economic impacts of the rule more generally, and no changes were made to the rule as a result of the comment.

#### Description and Estimate of Number of Small Entities to Which the Rule Would Apply

This rule will impact fishing vessels, including commercial fishing entities. In 2012, there were 2,265 vessels that held an open access skate permit. However, not all of those vessels are active participants in the fishery. If two or more vessels have identical owners, these vessels should be considered to be part of the same firm, because they may have the same owners. According to the Small Business Administration (SBA), firms are classified as finfish or shellfish firms based on the activity which they derive the most revenue. Using the \$5.5M cutoff for shellfish firms (NAICS 114112) and the \$20.5M cutoff for finfish firms (NAICS 114111), there are 526 active fishing firms, of which 519 are small entities and 7 are large entities. On average, for small entities, skate is responsible for a small fraction of landings, and active participants derive a small share of gross receipts from the skate fishery (approximately 34 percent in 2011 and 2012 fishing years came from skate revenue).

#### Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

This action does not introduce any new reporting, recordkeeping, or other compliance requirements. This rule does not duplicate, overlap, or conflict with other Federal rules.

#### Description of the Steps the Agency Has Taken to Minimize the Significant Economic Impact on Small Entities Consistent With the Stated Objectives of Applicable Statutes

During 2012, total revenues from skate landings were valued at approximately \$6.6 million. The 2012 data are representative of an average-landings skate year, whereas the 2011 data are representative of a recent high-landings skate year. Compared to the no action alternative, the Preferred Alternative's reduction in the skate TALs (30 percent) could reduce

potential annual skate revenues. However, the fishing year 2012 and 2013 skate landings were below the TAL implemented by this action, suggesting that it is unlikely that potential revenue losses would be directly commensurate with the TAL reduction. If skate landings in 2014 and 2015 are comparable to those observed in 2012 and 2013, then the skate fishery may experience no loss of skate revenue, but may actually come closer to fully harvesting the available amount of landings.

The preferred (status quo) skate wing and bait possession limit alternatives were selected because they have a high likelihood of providing a consistent rate of skate landings for the entire fishing year, while likely achieving 100 percent of the respective TALs. Alternatives with lower possession limits (one alternative in each fishery: 1,500 lb (680 kg)/2,400 lb (1,089 kg) in the wing fishery; 20,000 lb (9,072 kg) in the bait fishery) would increase the likelihood of not achieving the proposed TAL by the end of the year, resulting in losses of potential skate revenues. A single alternative for a higher skate wing possession limit (5,000 lb (2,268 kg)) was not preferred because it was projected to reach the in-season incidental possession limit trigger point (85 percent of the TAL) early in the fishing year, effectively closing the directed skate wing fishery for part of the year, which would result in distributional shifts of benefits from late-season harvesters to summer harvesters.

Changes to skate vessel and dealer reporting requirements are administrative measures, and the preferred and no action alternatives have no associated economic impacts. Vessels and dealers are already required to report the skates that they catch/purchase.

#### Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA,



the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as “small entity compliance guides.” The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a letter to permit holders that also serves as small entity compliance guide was prepared. Copies of this final rule are available from the Greater Atlantic Regional Fisheries Office, and the guide, i.e., permit holder letter, will be sent to all holders of permits for the skate fishery. The guide and this final rule will be available upon request, and posted on the Greater Atlantic Regional Fisheries Office’s website at [www.nero.noaa.gov](http://www.nero.noaa.gov).

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: August 25, 2014.

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Eileen Sobeck,  
Assistant Administrator for Fisheries,  
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648--FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 et seq.

2. In § 648.7, revise paragraphs (a)(1)(iii) and (b)(1)(iii) to read as follows:

§ 648.7 Recordkeeping and reporting requirements.

(a) \* \* \*

(1) \* \* \*

(iii) Dealer reporting requirements for skates. In addition to the requirements under paragraph (a)(1)(i) of this section, dealers shall report the species of skates received as specified in this paragraph. Species of skates received as bait shall be identified according to the following categories: Winter skate, little skate, little/winter skate, barndoor skate, smooth skate, thorny skate, clearnose skate, and rosette skate. Species of skates received as wings (or other product forms not used for bait) shall be identified according to the following categories: Winter skate, barndoor skate, thorny skate, and clearnose skate. NMFS will provide dealers with a skate species identification guide.

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(b) \* \* \*

(1) \* \* \*

(iii) Vessel reporting requirements for skates. In addition to the requirements under paragraph (b)(1)(i) of this section, the owner or operator of any vessel issued a skate permit shall report the species of skates landed as specified in this paragraph. Species of skates landed for bait shall be identified according to the following categories: Winter skate, little skate, little/winter skate, barndoor skate, smooth skate, thorny skate, clearnose skate, and rosette skate. Species of skates landed as wings (or other product forms not used for bait) shall be identified according to the following categories: Winter skate, barndoor skate, thorny skate, and clearnose skate. Discards of skates shall be reported according to two size classes, large skates (greater

than or equal to 23 inches (58.42 cm) in total length) and small skates (less than 23 inches (58.42 cm) in total length). NMFS will provide vessel owners or operators that intend to land skates with a skate identification guide to assist in this data collection program.

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